SUPREME COURT OF THE UNITED STATES.

No. 171.

LECIL W. DEAN, APPELLANT,

vs.

ROBERT D. HARVEY, ADMINISTRATOR OF W. H. YONNELL, DECEASED.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

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1 District Court of the United States for the northern district of Georgia.

LECIL W. DEAN
vs.
ROBERT D. HARVEY, as administrator of William H. Yonell, deceased. } In equity.

Bill for rescision of sale and cancellation of deed, all other relief and injunction.

To the District Court of the United States for the northern district of Georgia, exercising the jurisdiction of the other Circuit Courts of the United States:

Lecil W. Dean, of Blount county, in the State of Alabama, and a citizen of the said State of Alabama, brings this his bill against Robert D. Harvey, of Rome, in Floyd county, in said State of Georgia, and a citizen of the State of Georgia, as the administrator of all and singular the goods and chattels, rights and credits, and lands and tenements, which were of one William H. Yonell, deceased, at the time of his death, who died intestate in said county of Floyd, in said State of Georgia, and thereupon complains and says: Your orator, the said Lecil W. Dean, that he, your orator, at, to wit, on and for several years previous to the nineteenth day of February, in the year of our Lord eighteen hundred and sixty-four, was the true and lawful owner and possesser in his own right in fee simple of the lands and tenements described as follows, to wit: lots of land numbers six hundred and sixty, (660,) seven hundred and seven (707,) seven hundred
2 and eight, (708,) seven hundred seventy-nine, (779,) and seven hundred and thirty-four, (734,) all of which lots are situate, lying, and being in the third district and fourth section of originally Cherokee, but now Floyd county, in the State of Georgia, and each of said lots containing forty acres more or less. Also lot number seven hundred and thirty-five, lying, being, and situated in the said third district, and fourth section of said county of Floyd, and said State of Georgia, containing forty acres more or less; and also lot number one hundred and sixty-seven of the sixteenth district of said fourth section of said county of Floyd, in the said State of Georgia, containing forty acres more or less, and all of said lots of land containing in the aggregate two hundred and eighty acres, more or less, and constituting a valuable and desirable settlement of lands, having thereon convenient and valuable improvements, being, at the date aforesaid, and now, of the value of six thousand dollars in good and lawful money of the United States.

Your orator further showeth, that at and for some months previous to the said nineteenth day of February, in the said year eighteen hundred and sixty-four, he, your orator, was laboring under the delusion that the treasury notes which had been issued by the Confederate States was good and lawful money; and further, that whilst laboring under such delusion, your orator, being approached and urged thereto

by one William Yonell in life, but now deceased, was induced
3 to make a pretended sale of all said lands and tenements to said William H. Yonell, at, to wit, on the said nineteenth day of February, eighteen hundred and sixty-four, for the illegal, pretended and worthless consideration of twenty-four thousand dollars of said confederate treasury notes, said sum of said confederate money being the sole and entire consideration of said pretended sale.

Your orator further showeth, that in pursuance of said pretended sale, and whilst laboring under the delusion aforesaid, he, your orator, at, to wit, on the said nineteenth day of February in the year of our Lord eighteen hundred and sixty-four, at, to wit, in the county of Floyd, in said State of Georgia, then and there did make and deliver to said William H. Yonell, your orator's pretended deed of conveyance in fee simple in and to all the said lands and tenements, as aforesaid, of even date therewith, which said pretended deed of conveyance does not specify any consideration in it, except by use of the words "value received," the same being so cunningly and fraudulently worded by direction of said Yonell to conceal and cover up the illegal, pretended, and worthless consideration, if any, for the same, a copy of which said pretended deed is hereto annexed and marked exhibit "A," which your orator prays may be taken as part of this his bill, with leave of reference thereto as often as may be necessary. And your orator avers that he has never received any other thing or matter whatever in payment or exchange for said lands and tenements or either or any or all of them.

4 Your orator further states, that even at the rate said confederate money was passing in the Confederate States, it worth only about five cents in the dollar, and that the said twenty-four thousand dollars in said confederate money were worth at said rates only the small sum of twelve hundred dollars, at the time said pretended deed was made, when the said lands so pretendedly sold for the same as aforesaid were well worth the sum of six thousand dollars or other large sum.

Your orator further shows, that he, your orator, at the time he made said pretended sale of said lands and tenements, and executed said pretended deed in and to the same, did not deliver possession of said lands or tenements, or of any part thereof, to the said William H. Yonell, his agent, or other person for him; but your orator kept and still continued in the possession of all said lands and tenements; and your orator so continued in possession of the same by himself and tenants until the eighth day of October, in the year of our Lord eighteen hundred and sixty-six, at which time your orator himself removed from said lands and tenements in said county of Floyd, and State of Georgia, to the present residence of your orator in Blount county, and State of Alabama, with the view and purpose of your orator of making this, his present residence, his permanent home and residence; but your orator left his mother, Mrs. Eliza Dean, and one Robert W. Richardson in the possession and control of all said
5 lands and tenements as tenants of your orator. And said Eliza Dean and said Robert W. Richardson, as tenants of your

orator, have continued in the possession and control of said property ever since your orator removed to the State of Alabama, as aforesaid, and are still in the possession thereof as such tenants. Your orator further shows, that he utterly repudiated the said pretended sale of said lands and tenements as void and of no force, by reason of the illegal consideration of confederate money as aforesaid; and your orator intends to hold on to and keep as his own all said lands and tenements, and not yield them or any part thereof to said Yonell or his representative, unless compelled to do so by the laws of the land. Your orator further shows, that after the date of the said pretended illegal sale of said lands and tenements, the said William H. Yonell departed this life intestate, and that the said Robert D. Harvey, then and now a citizen of Floyd county, in the said State of Georgia, was duly and legally appointed administrator of all the lands and tenements, rights and credits, and goods and chattels, which were of the said William H. Yonell, deceased, at his death, by order of the court of ordinary of said county of Floyd, in said State of Georgia, and that said Robert D. Harvey, as administrator, took upon himself and entered upon the administration of said deceased's estate.

Your orator further shows, that in a short time after said Robert D. Harvey was appointed administrator of the estate of said Yonell, deceased, he, said Harvey, to wit, in the month of January, in the year of our Lord eighteen hundred and sixty-six, called upon your orator, then in the quiet and peaceable possession of all said
6 lands and tenements, and by representing to your orator that he, your orator, was in law bound by said pretended and illegal sale to said Yonell, whilst in life, and by representing that your orator must and would be turned out of the possession of said lands and tenements by a summary process, unless your orator would agree to pay rent for said property to said Harvey as administrator as aforesaid, and also acknowledged that your orator held as tenant of him and under him, your orator being but an humble citizen, not versed in the knowledge of the law, and in ignorance of his rights in the case, and being thus mislead and overruled by the said administrator, who is a lawyer by profession and deeply skilled therein, induced your orator reluctantly to execute an instrument of writing to said administrator, whereby your orator formally rented said lands from said administrator, for the year of our Lord eighteen hundred and sixty-six; and the said administrator required your orator (and your orator did so with great reluctance) to insert in said writing, unjust, unusual, and oppressive specifications to the effect in substance that your orator would deliver up possession of said lands and tenements by the twenty-fifth day of December of said year eighteen hundred and sixty-six; that your orator would assent to the sale of said property by said administrator, and not prejudice nor try to prejudice said sale, and that your orator would lay no claim or claims against said estate of said deceased, &c., &c., a copy of which writing is hereto annexed and marked Ex-
7 hibit B, which your orator prays may be taken as part of this

his bill, with leave of reference thereto as often as may be necessary. Your orator further states, that at the time he made said last-named writing, he, your orator, as far as he then knew, could prevent being turned out of the possersion by said administrator in no other way than by executing the same, as the courts of the United States for the northern district of Georgia had not then resumed the exercise of its power since the late civil war had suspended the exercise thereof, and also because at that time, as your orator was a citizen of Georgia, the said courts of the United States had no jurisdiction in the matter. And your orator was then advised and believed, and is still so advised and believes, that the said State courts of the State of Georgia, as at present organized, would have refused, and would still refuse, to grant your orator relief from said illegal contract of sale. Your orator further says, that he was left by the wasting effects of the late rebellion almost pennyless, having no means with which to purchase a home for himself and family, and he was induced, as before stated, to make said writing to said administrator to avoid being turned out of home with his aged mother and little children in the midst of winter.

Your orator further states, that he, your orator, at, to wit, on the fifteenth day of November, in the year of our Lord eighteen hundred and fifty-nine, purchased of his mother, said Eliza Dean, the first five lots of land first before mentioned, containing, in all five, two hundred acres of land, for the consideration of thirty-five hundred dollars, good and lawful money, a part only of which your
8 orator paid to said Eliza Dean; but your orator still owes to said Eliza Dean the far greater part of said purchase-money, to wit, thirty-four hundred and twenty-one dollars, with interest at the rate of seven per centum per annum on the same from the first day of January, in the year of our Lord eighteen hundred and sixty, for which sum the said Eliza Dean has a good and just equitable lien on the said five lots of land; and unless said Eliza Dean can enforce her said lien on said land as a superior equity, to the claim of the said administrator under said pretended and illegal sale, your orator fears she will lose her rights altogether and utterly, as your orator as aforesaid is unable otherwise at present to pay said debt, and fears he continue so. Your orator further states, that for the year eighteen hundred and sixty-six, he, your orator, rented out a portion of said lands and tenements to one Levi Leming, at the usual rates of renting. Said Leming, by the first contract made between him and your orator, was to continue in possession of the lands and tenements rented until 25th day of December, of said year eighteen hundred and sixty-six, and then was to deliver them up to your orator; but some time in the fall of the year 1866 your orator rented the same premises to said Leming for the next ensuing year. This was done about the time your orator removed to the State of Alabama. And your orator left said Leming in possession, and relying upon his contract to cultivating said premises for the then next year; but in gross fraud of your orator, sometime after Christ-

mas, of the year eighteen hundred and sixty-six, said
9 said Leming and said administrator, unknowing to your orator, whilst said Leming still remained in possession of said premises, which he entered and was to hold under your orator, made a secret arrangement by which said Leming alterned to said administrator, but the said Leming remained in possession of said property but a short while under said arrangement. when he abandoned it, and your orator, by his agent, Robert W. Richardson, rented out the same to one Mallery for the present year, 1867, who is now in possession under a control for rent with your orator, through said Richardson, as your orator's agent. Your orator insists that the said pretended sale of said lands and tenements by your orator to said William H. Yonell, whilst in life, is void and of no effect, by reason that the consideration to be paid for the same by the agreement was to be confederate money and nothing else, the said confederate money having been issued by a power then at war with the government of the United States, and said money having been issued for the purpose of aiding in carrying on said war; and that the said pretended deed, by which said lands were attempted to be transferred to said Yonell, as aforesaid, is void, and should be so decreed and set aside by the decree of the court; and that even if the honorable court should consider that said sale and deed are not void for the illegal consideration as aforesaid, still, in consideration of the delusion of your orator in regard to the legality and value of confederate
10 money as aforesaid, the great inadequacy of the price given for said lands and tenements, the insolvency of your orator, and the equitable lien of the said Eliza Dean, and her relation to your orator, as a bona fide deed and subsisting creditor of your orator, the said sale and conveyance ought to be rescinded, and in no event ought said administrator to be allowed more than the value of the confederate money, which his intestate paid for said land as aforesaid. And forasmuch as your orator cannot obtain full, adequate, and complete remedy in the premises in and by the rules of the common law, but only in a court of equity, where such things are properly cognizable and reliable, to the end that equity may be administered between the parties, your orator prays the honorable court by a decree to set aside said pretended and illegal sale and the said deed of conveyance made in pursuance of said sale, as aforesaid; also by decree to set aside and conceal the said writing, copy of which is marked Exhibit B to this bill, for the reasons aforesaid; and that the honorable court may grant unto your orator the writ of injunction directed to said Robert D. Harvey, as administrator, as aforesaid, enjoining him from selling, or offering to sell, any or all of said lands and tenements, or from making any attempt in any way from turning your orator or his tenants out of the possession of said property, or from taking or acquiring any control over said property, and that he be perpetually enjoined from doing so, and that such other and further relief may be granted your orator in the premises as shall seem to the honorable court meet and in accordance with the principles of equity.

11 May it please the honorable court to grant unto your orator the United States writ of subpœna directed to said Robert D. Harvey, as administrator of William H. Yonell, deceased, thereby commanding him at a certain day, and under the penalty therein limited, to be and appear at the District Court of the northern district of Georgia, to be held in and for said district, on the day of , then and there full, true, perfect and direct answers to make to all singular the statements and allegations set forth in this your orator's bill; and to stand to, perform, and abide by such further order, direction, and decree therein, unto the honorable court, as shall seem meet; and your orator will ever pray, &c.

ARNOLD & ROBINSON,
Solicitors for Complainants.

GEORGIA, *Floyd County*:

I, Lecil W. Dean, do solemnly swear that what is contained in this my bill in equity, as far as concerns my own act and deed, is true of my own knowledge; and that which relates to the act and deed of any other person I believe to be true.

L. W. DEAN.

Sworn to and subscribed before me this 2d day of May, 1867.
THOMAS J. PERRY, *J. P.*

12 STATE OF GEORGIA, *Floyd County*:

This indenture, made and entered into this the nineteenth day of February, in the year of our Lord eighteen hundred and sixty-four, (1864,) between L. W. Dean, of the county and State aforesaid, of the one part, and W. H. Yonell, of the county of Rockingham, and State of Virginia, of the other part, witnesseth: That the said L. W. Dean, for and in consideration of value received, to him in hand paid by the said William H. Yonell, the receipt whereof is hereby acknowledged, hath granted, bargained, sold and conveyed, and by these presents doth grant, bargain, sell and convey, unto the said Wm. H. Yonell, his heirs and assigns, all that tract or parcel of land lying and being in the county of Floyd, in the 3d (third) district and 4th section, known and distinguished as lots numbers six hundred and sixty, (660,) seven hundred and seven, (707,) seven hundred and eight, (708,) seven hundred and thirty-four, (734,) seven hundred and thirty-five, (735,) and seven hundred and seventy-nine, (779,) in said district and section, and lot number one hundred and sixty-seven, (167,) in the sixteenth district and fourth section, containing two hundred and eighty acres, more or less, to have and to hold said lots or parcels of land unto him the said Wm. H. Yonell, his heirs and assigns, forever, in fee simple. And I, the said L. W. Dean, will warrant and forever defend the right and title to the aforesaid lots of land unto the said Wm. H. Yonell, his heirs and assigns, against the claims of myself, and all and every other person or persons whatsoever.

13 In witness whereof the said L. W. Dean hath hereunto set my hand and seal the day and year first above written.

[SEAL.] L. W. DEAN.

Signed, sealed, and delivered in the presence of—
MATHEW GRIFFIN,
SIMEON HAMIL, *J. P.*

"Stamped and cancelled January 8th, 1866, by R. D. H., agent for W. H. Y."

GEORGIA, *Floyd County:*

Alexander T. Harper comes before me, the undersigned clerk of the Superior Court, and says on oath, that he is acquainted with the land conveyed in this deed, and is satisfied that the value thereof does not exceed six thousand dollars.

ALEX. T. HARPER.

Sworn to and subscribed before me this January 8th, 1866.
A. R. ROSS, *Sup'r Court, Floyd County.*

Stamped and cancelled.

14 GEORGIA, *Floyd County:*

R. D. Harvey comes before me, the undersigned clerk of the Superior Court, and on oath says, that he is the agent in this State for the estate of Wm. H. Yonell, deceased, the granter in this deed, and is proceeding to administer on said Yonell estate, and has diligent inquiry as to the value of lands herein conveyed, and is satisfied that it does not exceed six thousand dollars in value, who put on it six dollars revenue stamps.

R. D. HARVEY.

Sworn to and subscribed before me January 8th, 1866.
A. B. ROSS,
Cl'k Sup'r Court Floyd County, La.

[Stamped and cancelled, 5-c.]

Recorded January 8th, 1866.

A. B. ROSS, *Clerk.*

The above is a correct copy from the records in my office.
A. B. ROSS, *Clerk.*

15 *Exhibit B.*

GEORGIA, *Floyd County:*

This agreement witnesseth, that Lecil W. Dean, has rented of R. D. Harvey, as adm. of W. H. Yonell, deceased, the farm or place where said Dean now resides, near Cave Springs, said county, containing in all about 280 acres, as described in said Dean's deed to said Yonell, and having (say) about one hundred and fifty acres cleared.

Lecil Dean is to cultivate the place or all the open land well in corn or cotton, and gather and have the corn and gin the cotton, and also

pack it, and take good care of the place, and keep it and leave it in good repair, and give said administrator one-third of the corn, and of the cotton one-fourth made on the place, and deliver possession of said premises to said administrator, or his assigns, or his order, by the 25th December next, and it being contemplated that said administrator will sell the place before the expiration of this time, and this being a final settlement of all claims which said Dean has or claims to have against said Yonell, or his estate, or on said land :

It is further understood and agreed, and it is a part of this contract, that said Dean will not prejudice, or try to prejudice, the sale of the place by said adm'r for its full value to the highest bidder, and that he will lay in no claim against said estate or said administrator, (he hereby relinquishing all such claims or demands, if has any,) except

16 the balance of about three hundred and thirty in a note made by said Yonell, intended to be payable in confederate money, which note was made for $1,000, and credited with $1,000 of confederate money, less one third which the money depreciated about the time it was paid, on account of the funding act.

Now, as to the balance of said note, it is agreed that when said administrator sells the place he is to pay such proportion of said balance of three hundred and thirty dollars as the whole purchase money he shall get for the place shall bear to the whole of confederate money, say $24,000, which said Yonell paid him for the place and taken up the note.

The garden he has free of rent, and also potato and turnip patches, as he may wish, not exceeding one acre.

The whole rented value estimated not to exceed $300, &c., &c.

Jan. 17th, 1866.

L. W. DEAN.

17 UNITED STATES OF AMERICA, *Northern District of Georgia:*

The President of the United States to Robert D. Harvey, administrator of William H. Yonell, deceased :

You are hereby commanded that you personally appear at the office of the clerk of the District Court of the United States for the northern district of Georgia, in the city of Atlanta, in said district, on the first Monday in July next, being the rules day of said court for said month, to answer to a bill of complaint exhibited against you by Lecil W. Dean, and to do further and receive what the said court shall have considered in the behalf; and this you are not to omit under penalty of five hundred dollars.

Witness the Honorable John Erskine, judge of the District Court of the United States for the northern district of Georgia, this 28th day of May, 1867.

[SEAL.]

ARNOLD & ROBINSON,
Solicitors for Compl't.
WM. B. SMITH, *Clerk.*

NOTE.—The defendant must enter his appearance in this suit in the

clerk's office at Atlanta, on or before the first Monday in July next, or the bill will be taken pro confesso.

WM. B. SMITH, *Clerk.*

Served a copy of the within writ on Robert D. Harvey, administrator, in person.
June 6th, 1867.

C. H. ELGER,
Deputy Marshal U. S. for the Northern District of Georgia.

18 *Bill for recision of sale and cancellation of deed also, and other relief and injunction.*

ATLANTA GEORGIA, NORTHERN DISTRICT,
At Chambers, July 1st, 1867.

After argument had, and upon careful consideration of the premises, it is ordered and adjudged that the injunctions prayed for be, and is hereby, denied; complainant to pay costs.

JOHN ERSKINE,
U. S. Dist. Judge.

Endorsed: No. 7. District Court of the United States for the northern district of Georgia. Sept. term, 1867. Lecil W. Dean *vs.* Robert D. Harvey, as administrator of Wm. H. Yonell, deceased. Filed May 28th, 1867. Wm. B. Smith, clerk.

19 In the United States District Court for the northern district of Georgia.

Bill for relief and injunction.

L. W. DEAN
vs.
R. D. HARVEY, adms. of W. H. YONELL.

The defendant, by protestation, not confessing any of the matter in and by said bill complained of to be true in manner and form as the same are set forth, says that he is advised that there is no matter or thing in said bill good and sufficient in law to call this defendant to account in this honorable court for the same; but that there is good cause of demurrer thereunto, and he does demur accordingly, and for causes of demurrer says, that said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree, or give complainant any relief as against this defendant. And defendant demurs specially also to the following parts of said bill, to wit, to the entire paragraph next to the last, and to that part towards the end of the last paragraph in stating part of said bill, which undertakes to introduce and set up the rights, or supposed rights, of Mrs. Eliza Dean, who is no party to the bill, and who is acknowledged

to reside in the same county and State with the defendant, and to that part of the prayer of the bill which seeks an injunction, particularly so much thereof as would prevent defendant from turning out complainant and his tenants and acquiring possession and control of said premises through the State courts, the same being in effect a prayer to stay and enjoin proceedings in the State courts.

20 Wherefore, and for divers other errors in said bill contained, and apppearing on the face thereof, this defendant does demur to said bill as a whole, and specially to the several parts above-named, and humbly craves the judgment of this honorable court whether he is compellable, or ought to make any answer thereunto, otherwise than aforesaid, and prays to be here dismissed with his costs and charges in this behalf most wrongfully sustained.

COLLIER & HOYT, *Def't's Atty's.*

As counsel and solicitors for the defendants, we hereby certify that, in our opinion, the foregoing demurrer is well founded, and is not interposed for delay.

COLLIER & HOYT, *Def't's Atty's.*

GEORGIA, *Floyd County:*

Before me, John W. H. Underwood, judge of the Superior Courts of the Tallapoosa circuit in said State, personally came Robert D. Harvey, adm'r, &c., and being duly sworn, deposes and says on oath that he believes that he has good cause for filing the foregoing demurrer, and that the same is not interposed for delay.

R. D. HARVEY.

Sworn to and subscribed before me June 25th, 1867.

JOHN W. H. UNDERWOOD,
Judge S. C. T. C.

Filed in office 1st July, 1867.

WM. B. SMITH, *Clerk.*

21 District Court of the United States for the northern district of Georgia, September term, 1867.

UNITED STATES OF AMERICA:

Upon hearing the within demurrer, it is ordered that the same be sustained, and that the said bill of complaint be dismissed, and that defendant's solicitor have leave to enter up judgment against the complainant for cost of suit.

JOHN ERSKINE, *U. S. Judge.*

Whereupon it is adjudged by the court that the said defendant do recover of and from the said plaintiff the sum of fifty-four dollars and seventy-five cents for costs of suit in this behalf paid, laid out, and expended, and that the complainants in mercy, &c.

S. B. HOYT, *Def't's Att'y.*

Judgment signed and filed 24th September, 1861.

WM. B. SMITH, *Clerk.*

22 United States of America, northern district of Georgia, September term, 1867.

LECIL W. DEAN
vs.
ROBERT D. HARVEY, adm'r of WILLIAM H. Yonell, dec'd.

In this cause, final judgment having been rendered at the present term upon the decree of the court sustaining the demurrer of the defendant to the bill and dismissing the bill, the complainant, Lecil W. Dean, thereupon prays an appeal from the decree and judgment of this court to the next term of the Supreme Court of the United States to be held at the city of Washington, on the first Monday of December next. It is therefore ordered by the court that said appeal be granted, and that the clerk of this court certify the record and proceedings in this cause to the next term of said court, it further appearing to this court that the costs have been paid in this court.

In open court, 24th Sept., 1867.

JOHN ERSKINE,
U. S. District Judge for the State of Georgia.

23 UNITED STATES OF AMERICA, *Northern District of Georgia:*

I, William B. Smith, clerk of the District Court of the United States for the northern district of Georgia, do hereby certify that the foregoing and annexed writing of twenty-four pages is a true transcript of the record and proceedings in the said District Court, in the cause in equity therein stated of Lecil W. Dean, complainant, *vs.* Robert D. Harvey, administrator of William H. Yonell, deceased, with the exception of the answer to complainant's bill, and the replication thereto, said answer and replication not having been considered by the court, and the decree of court having been made after argument had upon the demurrer to the bill.

In testimony whereof I have hereunto set my hand and affixed the seal of said District of the United States for the northern district of Georgia, this twenty-sixth day of November, A. D. 1867.

[SEAL.] W. B. SMITH, *Clerk.*

SUPREME COURT OF THE UNITED STATES.

DECEMBER TERM, 1868.

[ADJOURNED SESSION OCTOBER, 1869.]

No. 171.

LECIL W. DEAN, Appellant,

VS.

ROBERT D. HARVEY,

ADMINISTRATOR OF

WM. H. YONNELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF GEORGIA.

BRIEF FOR APPELLANT

BY

JAMES HUGHES, OF COUNSEL.

Printed by W. H. Moore, 484 11th st.

In the Supreme Court of the United States.

LECIL W. DEAN, APPELLANT,
vs.
ROBERT D. HARVEY, ADMINISTRATOR OF WM. H. YONNELL. } No. 171.

Brief for Appellant.

This is an appeal from the Circuit Court of the United States for the Northern district of the State of Georgia.

Dean, the appellant, brought his bill in the court below, to which a demurrer was sustained, and the bill dismissed, the Hon. John Erskine, district Judge, presiding.

The object of the bill was to set aside and avoid a sale of real estate, because the sole consideration paid and to be paid therefor was in the currency made and issued by authority of the "Confederate States of America."

The vendor having remained in possession of the land sold, after the death of the vendee, his administrator, the present defendant artfully obtained from the vendor a writing in form of a lease, recognizing the title of the vendee and contracting to pay the administrator rent, with some other stipulations as to possession, &c. The bill prays that this writing be cancelled, &c.

The bill and exhibits (being the deed of conveyance and lease above mentioned) occupy the first eight pages of the record; the *demurrer* is on page nine, the *judgment* on page ten, and the order allowing an appeal on page eleven.

The judgment in the court below was only for costs, and it appears from the order granting an appeal, that the costs in the court below have been fully paid.

Although there is no appeal bond printed in the record, there is

in fact one filed in the Supreme Court of the United States, in compliance with the rules thereof.

Points for Appellant.

FIRST :

The purchase money was to be twenty-four thousand dollars in Treasury notes of the "Confederate States," and no other consideration whatever; the purchase money is not yet all paid; the appellant is still in possession of the land; the sale is not, therefore, completed, and, the contract being illegal, a Court of Equity will interfere and annul it.

Thompson vs. Powles, 2d Simon's R., 194.
Same case, 2d Condensed English Chan. R., p. 378.
Taylor vs. Barclay, 2d Simon's R., 213.
Same case, 2d Cond. Eng. Chan. R., 388.
McGregor vs. Lowe, 1 Car. & Payne, 200.
Same case, 11th Eng. Com. Law R., 367.
Chitty on Contracts, 7th American Ed., p. 718.

SECOND :

The "Confederate States" were an unlawful revolutionary combination, invested with no rightful Legislative powers, and their currency was illegal, and all contracts to make or to receive payments in that currency illegal and void.

4th Peters, 436.
Code of Georgia, secs. 2,709, 2,713, 2,714.
3d East, 222; 1st East, 96.
Alexander vs. Owen, 1st Tenn. Reps., p. 219.

THIRD :

In a case of this kind a Court of Chancery will grant relief even where the parties are *in pari delicto*.

1st Story's Equity, sec. 298, 9th Ga. Rep., 158.
Broom's Legal Maxims, 491.
2d Story, secs. 655, 695.
4th Bouvier's Institutes, 218, 220.

FOURTH :

The appellant being still in possession of the land, the contract is

unexecuted, and, being illegal, will not be enforced, but will be cancelled,

Adams' Equity marginal p., 175.

Bouvier's Law Dict., p. 282.

FIFTH :

The lease does not conclude the rights of appellant, nor stop him.

14th Sergeant & Rawle, 382.

15th Georgia, 491.

Smith's Landlord and Tenant, marginal, 22.

Co. Litt., 246; Bayley vs. Bradley, 57 Eng. Com. Law Reps., 396, 400, 405.

20th Georgia, 600 ; 7th Peters, 592.

Second Smith's Leading Cases, top-paging, 656–9.

9th New York, pp. 250, 257.

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